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09/966,487	09/28/2001	C. Kent Aldridge	37125-66050	5298

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THOMPSON COBURN LLP
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ST LOUIS, MO 63101

EXAMINER

COMPTON, ERIC B

ART UNIT	PAPER NUMBER
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3726

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03/05/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte C. KENT ALDRIDGE

Application No. 09/966,487
Technology Center 3700

Mailed: March 4, 2009

Before PAMELA S. BENNETT, *Review Team Paralegal*.

BENNETT, *Review Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on February 17, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matters requiring attention prior to docketing.

EXAMINER'S ANSWER, MISSING CERTIFIED TRANSLATION

On May 26, 2005, a supplemental Examiner's Answer was mailed in response to the Panel Remand mailed April 29, 2005. At the bottom of page 4, the Examiner referred to JP 01-262030 and JP 09-229079. These two references were listed on a PTO-892 which was included with the Non-Final Rejection mailed January 29, 2003. Full certified English translations of the above-noted foreign references are not of record in the Image File Wrapper (IFW).

When an Examiner relies on a document "in a language other than English, a translation *must* be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection" (emphasis added). *Manual of Patent Examining Procedure* (MPEP) §1207.02 (Eighth Edition, Rev. 3, August 2005). Pursuant to a memorandum dated April 29, 2002 by Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy:

Effective immediately, no appeal should be forwarded to the Board of Patent Appeals and Interferences for decision where: (1) a rejection is supported in whole or part by an abstract without reference to the underlying document, . . . ; or (2) a rejection is supported in whole or part by a prior art document not in the English language, unless accompanied by a translation of the prior art document into English.

The memorandum also states "[i]f the document is in a language other than English and the examiner seeks to rely on that document, a translation *must* be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection" (emphasis added).

EXAMINER'S ANSWER, MISSING SIGNATURE

Section 1211 of the MPEP (Eighth Edition, Rev. 2, May 2004) states, in part:

The Board has authority to remand a case to the examiner when it deems it necessary. . . . Furthermore, the Board may remand an application to the examiner to prepare a supplemental examiner's answer in response to a reply brief. . . .

The supervisory patent examiner should approve and the Board should be notified whenever a remanded application is withdrawn from appeal under any circumstance. See MPEP § 706.07(e) and § 1002.02(d).

The supplemental Examiner's Answer mailed May 26, 2005 is deficient because it does not contain the necessary signature. It should be noted that beginning with the August 2005 MPEP (Rev. 3), every supplemental Examiner's Answer must be approved by a Technology Center (TC) Director or designee.¹

CONCLUSION

Accordingly, it is **ORDERED** that the application is returned to the Examiner:

- 1) to obtain full certified English language translations of the above-noted foreign references (JP 01-262030 and JP 09-229079);
- 2) to complete the IFW by having the translations obtained scanned into the IFW file;

¹ In TC 3700, only a Director may approve a supplemental Examiner's Answer.

- 3) to provide copies of the translations obtained to Appellant;
- 4) to obtain the proper signature for the supplemental Examiner's Answer mailed May 26, 2005; and
- 5) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

PSB

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